

OPENING

Law Enforcement Newsletter

LINES



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Off the Cuff... Specialization

By Richard M. Romley, Maricopa County Attorney

In order to successfully combat modern crime, we must utilize sophisticated scientific and investigative techniques. The days when detectives relied on their wits alone and prosecutors concentrated on perfecting their oratorical skills to secure convictions are long gone. To ensure that justice is served, prosecutors must have expertise in a wide range of specialized investigative, scientific and technological disciplines. Toward that end, the MCAO Major Crimes Division is primarily made up of prosecutors who are experts in handling very complex cases submitted to this office. The division has seven specializations.

The **Homicide Bureau** is staffed by senior prosecutors — experts in areas ranging from the technicalities of DNA evidence to effective prosecution against insanity defenses. The attorneys are regularly in trial for up to 100 days each year. The **Special Crimes Bureau** prosecutes complex white collar crime, public corruption and arson cases. This bureau has been recognized for their aggressive approach to combating white collar crime. Prosecutors in our **Sex Crimes** and **Gang/Repeat Offender Bureaus** routinely prosecute the most dangerous criminals. These highly effective attorneys use knowledge of the offender's motives, background, propensity for violence and physiological profile to obtain convictions. The MCAO Sex Crimes Bureau has been nationally recognized and members of the bureau speak at conferences throughout the county. Recently, the Gang/ROP Bureau developed and implemented a criteria for identifying the most dangerous gang members as well as a protocol for targeting repeat offenders. The **Major Drug** and **Vehicular Crime Bureaus** must contend with changing laws and newly discovered protocols relating to scientific analysis, making specialization an absolute necessity. The members of these bureaus are actively

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Jerry's Journal

By Jerry Landau
Special Assistant, County Attorney

Supplements

Please include all supplements when submitting a departmental report for review. If that is not possible due to time constraints (i.e. the defendant is in custody), forward the supplement as soon as it is completed. If we do not have the supplement, obviously we are not fully informed about the case. In addition, failure to provide complete discovery to the defendant can result in sanctions. For instance, recently in two separate cases, supplements reporting confessions were discovered on the day of jury selection. Definitely a problem!

Form IV

The Form IV is a nifty little document completed each time an officer books a person into jail. In reality, the Form IV is an official form, an appendix to the Rules of Criminal Procedure, approved by the Arizona Supreme Court. Filling out this form when booking a defendant is extremely important for a variety of reasons. Of major importance, the information on the Form IV is utilized by the magistrate conducting the initial appearance and pretrial services in deciding the amount of bond to be set. Information about the offense, circumstances of the arrest and any background on the suspect, such as prior acts, arrests, convictions, failures to

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Arrest of Foreign Nationals

By Jerry Landau, Special Assistant, County Attorney

The United States Court of Appeals for the 9th Circuit, which includes Arizona, has issued an important decision regarding the arrest and detention of foreign nationals. The case *United States v. Lombera-Camorlinga* (1999WL 160848, March 25, 1999) held that Article 36(1)(b) of the Vienna Convention on Consular Relations requires a foreign national who is arrested, committed to prison or pre-trial custody, or detained (we do not believe this includes roadside investigatory stops or *Terry* stops) in any other matter shall be informed of the right to have the consular post of the person's country notified of the person's detention.

Lombera-Camorlinga was arrested for importation of marijuana and possession of marijuana with the intent to distribute. Customs agents, prior to questioning, advised Lombera-Camorlinga of his Miranda rights, but not the right to have the Mexican consulate notified. The Court of Appeals held that statements made by a person may be suppressed if the defendant can show prejudice as a result of law enforcement's failure to advise the detained person of the provisions of Article 36(b)(1) of the Vienna Convention.

We are awaiting word as to whether the United States Attorney's Office (Southern District of California) and the Department of Justice will appeal. However, it is extremely prudent for all law enforcement personnel to consider this decision when questioning foreign nationals who are detained.

I would also point out the treaty mandates notification if a foreign national from a certain list of countries is detained. Please refer to the letter sent to your department by Chief Deputy County Attorney Paul Ahler in August of 1998. For further information contact the Office of the Assistant Legal Advisor for Consular Affairs L/CA, Room 5527 A, United States Department of State, Washington, D.C. 20520. The telephone number is (202) 647-4415. I am available to answer questions as well, 506-5781. ⚖️

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appear and likelihood of causing further harm to the public is very important.

In addition, the United States Supreme Court and Arizona law requires that the magistrate be provided with sufficient information to determine whether there is probable cause to believe a crime was committed and the suspect committed the crime. Officers must include the probable cause information on the Form IV. If there is insufficient information on the Form IV to allow the magistrate to find probable cause the suspect must be released from custody.

Evidence, Evidence . . .

We are experiencing situations where evidence is being destroyed prior to the case being set for trial. This situation most commonly arises where the defendant is out on warrant and the case sits until the defendant is apprehended. Please do not destroy evidence without checking with the County Attorney's Office. If you cannot ascertain who the assigned attorney is, feel free to contact Jerry Landau. ⚖️

Submit information to:

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Helpful Hints

Helpful Hints

Promoting Prison Contraband

A suspect who is arrested and taken to jail is not committing "Promoting Prison Contraband" when the suspect is searched during booking and drugs are found. Promoting Prison Contraband is charged only after evidence of intent to have the drugs enter the prison system is established.

Plea Deadline

The plea deadline policy enhances justice for victims and law enforcement by obtaining a just and speedy resolution of the criminal case. When a criminal defendant is arraigned, the Deputy County Attorney is required to send a written plea agreement to the defense attorney no later than ten days after the arraignment on a nonvictim case, 90 days on a victim case. The defendant must plea by that date. The Maricopa County Attorney will not make another offer after the deadline date except for exceptional cases. If the offer is not accepted and entered by the deadline, the Deputy County Attorney will request a trial within 60 days after the deadline. In order for the plea cut off policy to remain effective, Deputy County Attorneys need cooperation from officers. By appearing for interviews within the framework outlined by the policy, officers will eliminate any further delays in justice.

Pretrial moves to the Wells Fargo Building

The Pretrial Division's new address is 100 W. Washington, Phoenix, AZ 85003. The phone system is still experiencing technical difficulties. We will forward the new numbers as soon as the phone system is up and running. We apologize for the inconvenience.

The verdict is in...

The following cases were recently decided by the Supreme Court and pertain to officers in the field.

QUESTION OF EXCESSIVE FORCE RESOLVED

The defendant in *State v. Yoshida* was convicted of one count of aggravated assault on a police officer. Responding to a domestic violence call, officers were concerned about the defendant's possible suicidal intent and one officer therefore restrained her to make her stay in the apartment and wait for a crisis intervention team. Resisting the officer's arm around her neck, the defendant bit the officer, breaking the skin and drawing blood. The defendant claimed later that she had not really been suicidal, and that she bit the officer in self-defense, in response to the officer's excessive use of force. Her contention on appeal was that the officer, by remaining in the apartment and restraining her when it was clear that she was not really suicidal, violated her 4th amendment right to be free from unlawful searches and seizures. Because the officer's actions were unconstitutional, she further claimed, the officer was not engaged in the execution of official duties when the assault occurred; and the defendant's behavior does not therefore constitute an assault on a police officer pursuant to ARS 13-1204 (A) (5). The Court examined the nature of the official duties of a peace officer and said that under the facts of this case the officer had reason to enter and remain in the defendant's apartment and to detain the defendant when she tried to leave. The Court said that, even if it were otherwise, the term

"official duties" as it appears in ARS 13-1204 encompasses all aspects of a peace officer's good faith performance of his or her job-related duties, even if the officer's actions are later found to be constitutionally unreasonable. The Court said that the legislature certainly did not intend for the police to forfeit the protection of the statute whenever, faced with an ambiguous situation in the field, they make a mistake in how they respond to that situation. The Court also said that there was substantial evidence to support the trial court's finding that the officer did not use unlawful excessive force in subduing the defendant. The Court affirmed the conviction.

OFF-DUTY STATUS DOES NOT RELIEVE AN OFFICER OF DUTY

In *State v. Fontes*, the defendant was convicted of aggravated assault on an officer and resisting arrest. He was caught stealing from a store by the off-duty sheriff's deputy who was working for the store as a security officer. When the deputy stopped the defendant he showed defendant his badge, identified himself as a sheriff's deputy, and told the defendant that he was under arrest. The defendant shoved a store manager and ran. When the deputy caught him he resisted, fought, and threatened the deputy. On appeal the Court of Appeals rejected the defendant's argument that the off-duty deputy was not a peace officer per ARS 13-1204(A)(5); finding that off-

duty status does not relieve an officer of the duty to maintain public order and make arrests. In answer to the defendant's argument that the officer was not engaged in official duties and acting under color of his official authority, the Court said that the distinction between merely working for a private employer is whether the officer was acting in vindication of public right and justice. Since the deputy in this case was acting for the public, he was a peace officer engaged in the execution of his official duties, or acting under color of his official authority, for purposes of ARS 13-1204(A)(5) and 13-2508(A). The Court affirmed the convictions and sentences. ⚖️

Arizona Sex Crimes Investigators Association

Have you heard the latest sex crimes information?

Find out by joining us each month at the Arizona Sex Crimes Investigators Association seminar sponsored by the Maricopa County Attorney's Office and the Governor's Division for Children. The third Friday of each month, guest speakers and law enforcement specialists address a variety of topics related to sex crime prosecution. It's guaranteed to be informative as well as entertaining. Call Kris Hatfield for the date, location, time and topic of April's seminar.


As always, ASCIA Seminars are offered at no cost to participants. The April seminar is limited to 80 participants. Please confirm your attendance with Kris Hatfield or Cindi Nannetti at (602) 506-8556.



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involved in educating community groups and working with police agencies to curb these types of crimes.

The **Family Violence Bureau** was implemented in response to increasing violence within the family. Family violence is the second leading cause of homicide and is a threat not only to individual family units but to our community as a whole. I created the bureau because I thought that having a team of prosecutors that understands the dynamics of family violence was necessary and have the experience and strength to work with victims who often insist criminal charges be dismissed.

There is no doubt that the creation of these specialized bureaus within the Major Crimes Division has enhanced the ability of our office to stand toe-to-toe with well-financed defense attorneys who use the latest techniques in protecting their clients' interests. I am pleased to say that our prosecutors are nationally recognized and often called upon to lecture throughout the country. The effective prosecution of these deviant and often heinous crimes is an utmost priority for the administration. By utilizing the skills of our specialized prosecutors, the Major Crimes Division is successfully fighting crime in Maricopa County. 



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Upcoming Events

TORCH RUN

The Maricopa County Attorney's Office and Arizona Special Olympics together with more than 100 Law Enforcement Agencies throughout Arizona officially have launched the "Blast Off to Success" 1999 Arizona Law Enforcement Torch Run for Special Olympics.

Our common goal is to raise money to support Special Olympic Athletes. We encourage everyone to get involved either by participating in the run, making a donation, pledges or purchasing products that are being sold by personnel of your agency.

Statewide Run will be May 17-21
· Summer Games Opening Ceremonies May 21 · Desert Vista High School · 16440 South 32nd Street.

For more information, please call Elizabeth Sukenic at 506-3411.

Victims' Voices: Silent No More.

National Victims' Rights Week will take place April 25 to May 1. Stay tuned for more information on the April 25th Victims' Rights Rally.